

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

IN RE APPLICATION OF: Jaap BAKKER et al.
SERIAL NO. : 10/561,759
FILED : July 28, 2006
TITLE : GUIDE, ASSEMBLED GUIDE AND DEVICE FOR
CONDITIONING PRODUCTS DISPLACEABLE
ALONG A GUIDE TRACK
Group/A.U. : 3651
Examiner : Kavel Singh
Conf. No. : 1638
Docket No. : P06937US0

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:


This is an appeal from the final rejection of claims 1-21
dated September 14, 2007.

I. Real Party In Interest:

The real party in interest of the instant appeal is Stork
Townsend B.V., having an address of Industrielaan 63, Oss,
Netherlands 5349 AE.

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on this 9th day of January 2008.



Timothy J. Zarley, Reg. No. 45,253

II. Related Appeals and Interferences:

There are no related appeals or interferences.

III. Status of the Claims:

Presently, claims 1-21 are pending in this application and appear as Appendix A of this Brief. Claims 1-21 are identified as the appealed claims.

IV. Status of Amendments:

No amendments have been made since the final rejection of September 14, 2007.

V. Summary of Claimed Subject Matter:

Claims 1-21 relate to a guide for supporting a displaceable object having a plastic guide profile 30, over which displaceable objects can slide either directly or via a product carrier, and a support structure 32 supporting the guide profile 30, characterized in that the guide profile 30 is engaged at least at two spaced-apart positions by the support structure 32, at least one engaging position of which consists of a free support of guide profile 30 on support structure 32 such that the freely supporting side of guide profile 30 is displaceable relative to the support structure 32. See Page 1, lines 28-30; Page 6, lines 2-6; Fig. 5.

Claim 2 adds the limitation that the guide profile 30 is coupled rigidly on one side to support structure 32. *Id.*; see also Page 2, lines 3-6. Claim 3 adds the limitation that the guide profile 30 is provided with a three-dimensional contact surface 33 at the position where it supports freely on support structure 32. *Id.*; see also Page 2, lines 12-15. Claim 4 adds the limitation that support structure 32 is provided with a

three-dimensional contact surface 34 at the position where guide profile 30 supports freely thereon. *Id.*

Claim 5 adds the limitation that the free support of guide profile 30 on support structure 32 is formed by a recess 33 in guide profile 30 in which an engaging part 34 of support structure 32 engages close-fittingly and displaceably. *Id.*; see also Page 2, lines 19-21. Claim 6 further limits claim 5, requiring that a free space is enclosed between engaging part 34 of support structure 32 and a part of the recess 33 on the side remote from the engaging part 34, in which recess 33 the engaging part 34 is axially displaceable. *Id.*; see also Page 2, lines 21-24. Claim 7 further limits claim 6, requiring that recess 33 with the engaging part 34 displaceable therein is formed such that the direction of displacement of engaging part 34 relative to recess 33 is at least substantially parallel to the guide surface. *Id.*; see also Page 2, line 32 - Page 3, line 1.

Claim 8 adds to claim 5 the limitation that the tight fit of engaging part 34 of support structure 32 in recess 33 in guide profile 30 leaves free a slotted space between engaging part 34 and the inside of recess 33, the space being a maximum of 3 mm, and preferably less than 1 mm. *Id.*; see also Page 3, lines 4-9.

Claim 9 adds the limitation to claim 1 that guide profile 30 is manufactured from a high-molecular weight polyethylene, while claim 10 requires guide profile 30 to be metal. *Id.*; see also Page 3, lines 11-15. Claim 11 adds to claim 5 the addition limitation that engaging part 34 of support structure 32 and recess 33 in guide profile 30 are at least substantially cylindrical. *Id.*; see also Page 3, lines 17-18.

Claim 12 adds the limitation that guide profile 30 is provided on opposite sides with engaging positions. *Id.*, see also Page 3, lines 22-23. Claim 13 adds the limitation that a plurality of guide profiles 30 are mutually connected with a gap to each other. *Id.*; see also Page 3, lines 25-27. Claim 14 further limits claim 13, requiring that the gap is between 5-35 mm at atmospheric pressure. *Id.*; see also Page 3, lines 29-32. Claim 15 further limits claim 13, requiring that the guide profiles 30 are engaged by a single support structure 32, while claim 16 limits claim 13 by requiring that guide profiles form a helical guide track 22. *Id.*; see also Page 3, line 32 - Page 4, line 2; Fig. 4.

Claim 17 depends from claim 13, and further requires a displacing means for displacing products along the plurality of guide profiles 30, a housing 23 at least partially enclosing the plurality of guide profiles 30 and the displacing means, and conditioning means for regulating the atmosphere in housing 23. *Id.*; see also Page 4, lines 7-11; Fig. 4.

Claim 18 adds to claim 17 the limitation that the conditioning means comprise temperature-regulating means. *Id.*; see also Page 4, lines 11-12. Claim 19 adds to claim 17 the limitation that the assembled plurality of guide profiles 30 comprises a vertically oriented, helical conveyor track 22 with a housing 23 placed therearound. *Id.*; see also Page 4, lines 12-14. Claim 20 depends from claim 19, and further requires that a rotatable core be placed in the helical conveyor track 22. *Id.*; see also Page 4, lines 14-15. Claim 21 adds to claim 17 the limitation that the displacing means comprise a driven endless conveyor track. *Id.*; see also Page 4, lines 15-18.

VI. Grounds of Rejection to be Reviewed on Appeal

The Examiner has rejected claims 1-7¹, 9-13, 15-17 and 19-21 under 35 USC § 102(b) as anticipated by US Pat No 4,637,529 to Tarlton et al. Claims 8 and 14 have been rejected as obvious under 35 USC § 103(a) over Tarlton et al. Additionally, the Examiner has rejected claim 18² as obvious under 35 USC § 103(a) over Tarlton et al. in view of US Pat No 1,651,912 to Thompson. For purposes of this Brief, the § 103 rejections have been grouped and are being collectively addressed.

VII. Argument

1. Rejection of Claims 1-7, 9-13, 15-17 and 19-21 under 35 USC § 102(b)

Claims 1-7, 9-13, 15-17 and 19-21 are rejected under 35 USC § 102(b) as being anticipated by Tarlton et al. Anticipation under § 102(b) "requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee." Hoover Group, Inc. v. Custom Metalcraft, Inc., 66 F.3d 299, 302, 36 USPQ2d 1101, 1103 (Fed.Cir. 1995). "[P]rior knowledge by others requires that all of the elements and limitations of the claimed subject matter must be expressly or inherently described in a single prior art reference." Elan Pharms., Inc. v. Mayo Foundation for Medical Educ. & Research, 304 F.2d 1221, 1227, 64 USPQ2d 1292 (Fed.Cir. 2002) (citing In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950 (Fed.Cir. 1999); Constant v. Advanced Micro-Devices, Inc., 848 F.2d 1560, 1571, 7 USPQ2d 1057, 1064 (Fed.Cir. 1988)).

¹ Compare Final Office Action page 2 (identifying rejected claims as 1-5, 9-13, 15-17 and 19-21) with page 3 (stating grounds for rejection of claims 6-7 as well).

² Compare Final Office Action page 3 (identifying rejected claims as 8 and 14) with page 3 (stating grounds for rejection of claim 18).

"The single reference must describe and enable the claimed invention, including all claim limitations, with sufficient clarity and detail to establish that the subject matter already existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention." Id. (citing Crown Operations Int'l, Ltd. v. Solutia Inc., 289 F.3d 1367, 1375, 62 USPQ2d 1917, 1921 (Fed.Cir. 2002); and In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed.Cir. 1990)). See also PPG Indus., Inc. v. Guardian Indus. Corp., 75 F.3d 1558, 1566, 37 USPQ2d 1618, 1624 (Fed.Cir. 1996).

Claim 1 requires, *inter alia*, "a plastic guide profile having a guide surface over which displaceable objects can slide directly or via a product carrier" (emphasis added). US Pat No 4,627,529 to Tarlton et al. does not teach this limitation. Tarlton et al. instead teaches an "outer guide 42 which extends about the spiral conveying path." '529 at Col. 3, lines 37-38.

Most notably, Examiner has reasoned that "[t]he guide (42) provides the path for the conveying surface (26) to slide through." Final Office Action at Page 2 (emphasis added). Applicant cannot agree. Outer guide 42 is merely "an outer restraint for guiding the conveyed products." '529 at Col. 3, lines 38-39 (emphasis added). In other words, under the teaching of Tarlton et al., conveyed objects will follow the path of the conveyor, not the guide, UNLESS AND UNTIL the objects reach the 'outer restraint.' In fact, it is quite possible that such objects will NEVER contact the outer restraint, so long as they are sized and spaced appropriately in relation to the conveyor, and as long as other limiting factors such as speed, weight and balance are not exceeded.

This conclusion is compelled by the express language of Tarlton et al. "Outer" is defined as "located on the outside; external", while "restraint" is defined as "an instrument or

means of restraining (limiting or restricting)." See THE AMERICAN HERITAGE® DICTIONARY OF THE ENGLISH LANGUAGE, Fourth Edition (2006, Houghton Mifflin Company), accessed at www.dictionary.com. No reasonable interpretation of Tarlton et al. permits outer guide 42 to be construed to be the "surface over which displaceable objects can slide", as is plainly required by Applicant's claim 1.

Furthermore, the above-quoted passage from Tarlton et al. explains that outer guide 42 "extends about the spiral conveying path." '529 at Col. 3, lines 37-38 (emphasis added). "About" in this context means:

1. On all sides of; surrounding;
2. In the vicinity of; around;
3. Almost the same as; close to; near.

THE AMERICAN HERITAGE® DICTIONARY OF THE ENGLISH LANGUAGE, Fourth Edition (2006, Houghton Mifflin Company), accessed at www.dictionary.com. Therefore, outer guide 42 cannot be one and the same with the conveying path, nor can outer guide 42 be the "surface over which displaceable objects can slide."

Stated quite simply, Examiner has overlooked a critical distinction between the prepositions "over" (Claim 1) and "about" (Tarlton et al.), a distinction that would be fully appreciated by persons of ordinary skill in the art. Moreover, Examiner further muddied the waters by injecting a third distinct preposition in the text of the Final Office Action at Page 2:

The guide (42) provides the path for the conveying surface (26) to slide through.

(emphasis added). Regardless, Applicant submits that neither "about" nor "through" anticipates "over".

Tarlton et al. does not teach a guide surface over which displaceable objects can slide. At best, Tarlton et al.

discloses an outer restraint extending about a path for displaceable objects. Each of claims 2-7, 9-13, 15-17 and 19-21 depends from claim 1. Because the cited reference does not teach all of the limitations of the rejected base claim, rejection of dependent under 35 USC § 102(b) is improper. It is therefore requested that these rejections be withdrawn.

2. Rejection of Claims 8,14 and 18 under 35 USC
§ 103(a)

Claims 8, 14 and 18 each depend from claim 1. For the reasons set forth above with respect to the rejection of claim 1 under 35 USC § 102(b), and incorporated by reference as if fully set forth herein, Tarlton et al. does not teach all of the limitations of the base claim. As respects claim 18, Thompson does not cure Tarlton et al., as Thompson, directed to a cooling can track, does not teach a plastic guide profile having a guide surface over which displaceable objects can slide.

In order to establish a *prima facie* case of obviousness, all the claim limitations must be taught by the prior art. In *re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); see also *In re Wilson*, 57 CCPA 1029, 1032 (1970) ("All words in a claim must be considered in judging the patentability of that claim against the prior art.") In the instant case, the cited references do not, individually or in combination, teach all of the limitations of the rejected base claim.

Because the Examiner has failed to establish a *prima facie* case of obviousness, the Examiner's rejection of claims 8, 14 and 18 cannot stand, as a matter of law. Applicant requests that these rejections be withdrawn.

* * *

Thus, the Examiner has failed to make a prima facie case of anticipation or obviousness in this application.

Payment is included herewith. No other fees or extensions of time are believed to be due in connection with this response; however, consider this a request for any fee or extension inadvertently omitted, and charge any additional fees to Deposit Account 50-2098.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'TJZ', written over a horizontal line.

Timothy J. Zarley
Reg. No. 45,253
ZARLEY LAW FIRM, P.L.C
Capital Square
400 Locust Street, Suite 200
Des Moines, IA 50309-2350
Phone No. (515) 558-0200
Fax No. (515) 558-7790
Customer No. 34082
Attorneys of Record

- TJZ/JRJ/JLH/bjs -

Attachments: Appendices

VIII. Claims Appendix

1. Guide for supporting a displaceable object, comprising:
 - a plastic guide profile having a guide surface over which displaceable objects can slide directly or via a product carrier, and
 - a support structure supporting the guide profile,characterized in that the guide profile is engaged at least at two spaced-apart positions by the support structure, at least one engaging position of which consists of a free support of the guide profile on the support structure such that the freely supporting side of the guide profile is displaceable relative to the support structure.
2. Guide as claimed in claim 1, characterized in that the guide profile is coupled rigidly on one side to the support structure.
3. Guide as claimed in claim 1, characterized in that the guide profile is provided with a three-dimensional contact surface at the position where it supports freely on the support structure.

4. Guide as claimed in claim 1, characterized in that the support structure is provided with a three-dimensional contact surface at the position where the guide profile supports freely thereon.

5. Guide as claimed in claim 1, characterized in that the free support of the guide profile on the support structure is formed by a recess in the guide profile in which an engaging part of the support structure engages close-fittingly and displaceably.

6. Guide as claimed in claim 5, characterized in that a free space is enclosed between the engaging part of the support structure and a part of the recess on the side remote from the engaging part, in which recess the engaging part is axially displaceable.

7. Guide as claimed in claim 6, characterized in that the recess with the engaging part displaceable therein is formed such that the direction of displacement of the engaging part relative to the recess is at least substantially parallel to the guide surface.

8. Guide as claimed in claim 5, characterized in that the tight fit of the engaging part of the support structure in the recess in the guide profile leaves free a slotted space between the engaging part and the inside of the recess of a maximum of 3 mm, preferably less than 1 mm.

9. Guide as claimed in claim 1, characterized in that the guide profile is manufactured from a high-molecular polyethylene.

10. Guide as claimed in claim 1, characterized in that the support structure is manufactured from metal.

11. Guide as claimed in claim 5, characterized in that the engaging part of the support structure and the recess co-acting therewith in the guide profile are at least substantially cylindrical.

12. Guide as claimed in claim 1, characterized in that the guide profile is provided on opposite sides with engaging positions.

13. Assembled guide provided with a plurality of mutually connecting guides as claimed in claim 1, wherein a plurality

of guide profiles are placed connecting with a gap to each other.

14. Assembled guide as claimed in claim 13, characterized in that the gap between the profiles is between 5 and 35 mm at atmospheric temperature.

15. Assembled guide as claimed in claim 13, characterized in that the plurality of profile parts are engaged by a single support structure.

16. Assembled guide as claimed in claim 13, characterized in that the plurality of profiles forms a helical guide track.

17. Device for conditioning products displaceable along a guide track, comprising:

- an assembled guide as claimed in claim 13,
- displacing means for displacing the products for conditioning along the guide,
- a housing at least partially enclosing the assembled guide and the displacing means, and
- conditioning means for regulating the atmosphere in the housing.

18. Device as claimed in claim 17, characterized in that the conditioning means comprise temperature-regulating means.

19. Device as claimed in claim 17, characterized in that the assembled guide comprises a vertically oriented, helical conveyor track with a housing placed therearound.

20. Device as claimed in claim 19, characterized in that a rotatable core is placed in the helical conveyor track.

21. Device as claimed in claim 17, characterized in that the displacing means comprise a driven endless conveyor track.

IX. Evidence Appendix

None

X. Related Proceedings Appendix

None